

Minutes from the WeCAN Meeting held at Westfield City Hall Assembly Room on
July 28, 2009 at 7 pm.

Disclaimer: I hope you will find these notes helpful. They are not a complete representation of the meeting, but rather the highlights of topics discussed. Feel free to contact me at Westfield City Services Building (317) 804-3002 if you have any questions. -TB

July 28, 2009

Agenda

I. Foreclosures

II. Closing Announcements

I. Foreclosures

Matt Skelton, City of Westfield Community Development Department Director presented his background of 20 years of Urban Planning and 7 years as an attorney. At Baker and Daniels he mostly represented developers, although he represented 2 HOAs. He now leads the Community Development Department in planning/zoning and building and zoning enforcement.

The City's concerns with foreclosed properties are public health and public safety. For example, tall grass itself is not a nuisance. It is the fact that it is prone to infestations of cats and mice that cause a public health concern and the fact that when the grass dries out and becomes brittle, it can become a fire hazard.

Matt introduced [Scott Tanner](#) of Tanner Law Group. Scott has been an attorney for 15 years. His firm exclusively deals with HOAs. They have between 350 and 400 clients ranging from 4 units to over 4,000 lot HOAs.

He was asked to speak at WeCAN to describe the foreclosure process and answer any questions that the HOAs and neighborhoods have. Foreclosures are a national epidemic. The foreclosures affect not only the look of the home but also the neighborhood. The assessments go down and homes become harder to sell. There is also an increase of renters, which in itself is not a problem, but absentee landlords are increasing. The absentee landlords are not present to look after the property or check in and that can be a problem with the appearance of the homes.

There are several ways that a property is set to be foreclosed:

- 1) Foreclosure filed by a mortgage company. This makes the lien that the HOAs have put on the property go away. There is still hope of collecting the money that is due to the HOA though. The lien is also attached to the owner, not just the property, and can follow the owner. Since you may still be able to collect, don't wipe out the debt just because the property has been foreclosed on. The property owner could save the home before the property is foreclosed. If the property does go into foreclosure, keep track of where the owner goes, even if it is outside the neighborhood. The two reasons why you wouldn't be able to collect is that the owner goes into bankruptcy or moves somewhere where they can't be found.

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Caution when dealing with a mortgage company filing the foreclosure: The foreclosure can sit in court a very long time. Also once the mortgage company sells and a sheriff sale occurs, there is also an intentional delay in filing the title because as long as the property is not transferred in the new name, the new name doesn't get charged assessments because technically they are not the owner.

"Squatters" may be present during this period when ownership is in limbo. There is little that can be done if a crime has not been committed (like breaking in and entering). It would be hard to prove that the squatter is there without permission.

- 2) Foreclosure filed by a HOA. This is a proactive approach. Once filed, the mortgage company will sometimes contact the HOA and pay the assessment due to the HOA, and restructure the property owner's mortgage to include the dues. If you file foreclosure and it does go through the process, don't expect to get any money out of it. After all the fees are paid to everyone else, there is hardly anything left over for the HOA. The only benefit would be to get the delinquent owner out of the neighborhood. In other words, it would not be worth it to go through this process to collect \$150.

Suggestions to HOAs:

- 1) Tighten collection efforts. Collect promptly and be aggressive with late fees.
- 2) Budgeting. Budget smartly. If you know funds are going to be limited, build that into your budget.
 - a. If you wish to keep up lawns of foreclosed property, make sure to include the expense in the budget.
 - b. Plan for extra flowers at entranceways or put in a fountain, anything that will attract buyers to your neighborhood and keep them from going down the street to another neighborhood.
 - c. Increase assessment by \$25, it will get residents to show up at the meetings and they don't care if it is \$5 or \$25, it is still an increase and to stay in the neighborhood they still have to pay.
 - d. Make sure you have a reserve fund to accommodate maintenance of anything you put in (fountain, etc)
 - e. Sign longer contracts with vendors to take advantage of discounts
 - f. Increase insurance deductibles
 - g. Close non-essential amenities. If the pool is not manageable, close it. Residents will be more likely to understand the increase in assessments if they know their amenities might be taken away.
 - h. Get campers and boats out of the driveways. Studies show that the HOAs that enforce covenants get appraised at 10% more than the HOAs that don't enforce.
 - i. Hold special events that attract buyers. Some neighborhoods have Realty Companies come in and serve hot dogs in the common area and showcase homes for sale in the neighborhood. The sooner the homes get sold, the better it is for the neighborhood.
 - j. Set rental limitations.
 - k. Communicate. The board needs to talk to residents.

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- 3) Self-Help provision in covenants allows the HOA to go on the property to take care of it and also gives the HOA immunity from liability. Can possibly pass the expense to the owner of the property-generally you won't collect from the homeowner but can from the bank/sheriff.
 - a. If you don't have this provision in your covenants, you may want to speak with your attorney to get one put in. You can pass an amendment to your existing bylaws or if procedurally that would take a lot of effort, you can try amending your rules and regulations that typically just need board approval.

A question from the WeCAN member asked if there are any sample languages that can be provided regarding protections to the HOAs such as the self-help provision. Because of the uniqueness of each neighborhood and covenant, an attorney would have to look at each neighborhood. The 4 unit HOA might have different views than the 4,000 unit HOA. The government would have to make sure that the right information is put in the covenants and there are issues with updates tweaked by non-lawyers.

Mayor Cook suggested that if the HOAs are struggling with key covenant provisions, shouldn't the City have minimum covenant requirements for either new or new and existing HOAs? From the attorney standpoint, having a template, guide, or checklist tool would be beneficial but government requiring certain provisions in private contracts is another issue.

WeCAN members agreed that having standards for the betterment of the community would be positive. They also would like a fair way to change covenants. Since most of the covenants were put into place before the homeowners moved in, they feel that they have little say. The only way to get out of the covenant is to move. To change the covenants, some HOAs have to have 99 or 100 percent of votes. Should that be changed to a standard 60%?

There is a disconnect between some neighborhoods and developers. If a HOA disagrees with the developer on an issue, the developer has a lot more money in which to help with court costs.

Non-waiver clauses are becoming more common to deal with some problems faced by HOAs in the period after the developer phase when some of the covenants are not enforced. The non-waiver clause states that failure to enforce a covenant does not waive enforcement.

It was mentioned that the State Level needs to act in order to preserve the long term quality of life in Westfield. We need to develop a strong lobbying presence and address and problem and solution for legislation.

Currently, there is not a lobbying effort for HOAs or homeowners. There is a local chapter of Community Associations Institute but it does not have a strong presence.

Scott suggested WeCAN work with Carmel and Noblesville to find common problems and come up with a solution. Cities already have paid lobbyists that can get the education on the topic to the legislators and work to get the legislation passed. Several WeCAN members volunteered to research the common problems and solutions for HOAs. They will meet and come up with a model that can be shared with Carmel and Noblesville groups.

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The WeCAN Legislation Committee Members are:

Chair of the Committee Ron Rothrock (Centennial), Tony Ancich (Ashfield), Marlo Neustifter (Grassy Knoll), Jon Helms (Setters Run), Wayne Eells (Springmill Villages). If you have any comments or suggestions for this group, please email Ron at ron.rothrock@gotown.net.

II. Closing Announcements

1) Next WeCAN Meeting: Tuesday, August 25

2) Grand Junction Derby will be on Sunday, August 9. Please visit www.dwna.org for more information.

3) Road Construction Update:

SR 32 Traffic Switch

Please be advised that we will be switching traffic from the existing travel lanes to the new Westbound lanes on **Friday 07/31/2009**. Temporary interruptions to access will be as follows:

- 1.) Oakridge Rd and Spruce Ln-Access to Oakridge Rd and Spruce Ln from the new pavement will be temporarily interrupted until temporary "ramps" are constructed. Access for emergency vehicles and local traffic only, will be maintained until ramps are constructed.
- 2.) Austrian Pine-Access to Austrian Pine will be via the previously used detour along Dartown Rd to 175th St.
- 3.) Spring Mill Rd-Access to Spring Mill Rd south of SR 32 will be for Emergency Traffic Only. We will construct the south tie-in one lane at a time leaving one lane open to emergency vehicles. Spring Mill Rd north of SR 32 will have uninterrupted access.
- 4.) All other cross streets will have uninterrupted access.

If you have questions/suggestions, please email Tammy at tblackburn@westfield.in.gov.

Thank you!